

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 15, 2021

1:34 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Robert Myers

COMMITTEE CALENDAR

CONFIRMATION HEARING:

State Commission for Human Rights
William Craig - Sitka

- CONFIRMATION ADVANCED

SENATE BILL NO. 14

"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 14

SHORT TITLE: SELECTION AND REVIEW OF JUDGES

SPONSOR(S): SENATOR(S) SHOWER

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	JUD
02/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/03/21	(S)	Heard & Held

02/03/21	(S)	MINUTE (JUD)
02/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/05/21	(S)	Scheduled but Not Heard
02/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/10/21	(S)	Heard & Held
02/10/21	(S)	MINUTE (JUD)
02/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/12/21	(S)	Heard & Held
02/12/21	(S)	MINUTE (JUD)
02/15/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

WILLIAM CRAIG, Appointee
 State Commission for Human Rights
 Office of the Governor
 Sitka, Alaska

POSITION STATEMENT: Testified as appointee to the State Commission for Human Rights.

NANCY KAUFMAN, representing self
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 14 because it changes the selection process of judges.

MARIO BIRD, Attorney
 Law Office of Mario L. Bird
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 14 by relating constitutional convention comments.

LAWRENCE WHITE, representing self
 Eagle River, Alaska

POSITION STATEMENT: Testified in support of SB 14.

FRANK PUGH, representing self
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 14 to broaden the governor's ability to appoint judges.

DAVID FRAZIER, representing self
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 14 since it will provide fairness in the judicial selection process.

JANET JOHNSON, representing self

Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 14 to give the public a voice in judicial appointments.

LACY LIBBY, representing self

Wasilla, Alaska

POSITION STATEMENT: Testified in support of SB 14 to provide more transparency and accountability in the selection of judges.

BILL QUINN, representing self

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 14.

SANDY POWERS, representing self

Willow, Alaska

POSITION STATEMENT: Testified in support of SB 14 to have oversight of the judiciary by elected officials.

MIKE COONS

AMAC Action - Mat-Su Chapter

Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 14.

SIMON GILLILAND, representing self

Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 14.

ACTION NARRATIVE

[1:34:18 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Kiehl, Shower, Hughes, and Chair Reinbold.

CONFIRMATION HEARING(S) **State Commission for Human Rights**

[1:35:14 PM](#)

CHAIR REINBOLD announced consideration of the Confirmation Hearing for William Craig to the State Commission for Human Rights.

[1:35:35 PM](#)

At-ease

[1:37:03 PM](#)

CHAIR REINBOLD reconvened the meeting.

[1:37:34 PM](#)

WILLIAM CRAIG, Appointee, State Commission for Human Rights, Office of the Governor, Sitka, Alaska, said that serving on the commission was a good fit for him given that he has worked on behalf of the blind and handicapped community for the past 28 years, advocating for the blind and as a volunteer, lobbying at the state and federal level.

[1:38:25 PM](#)

CHAIR REINBOLD reviewed his experience, noting he served as a board member for the National Federation of the Blind, Alaska Affiliate and as 2nd Vice President/Legislative Director for the National Federation of the Blind Affiliate.

MR. CRAIG agreed.

[1:38:36 PM](#)

SENATOR KIEHL said he is asking the following question of all nominees to the State Commission for Human Rights. He said that over the summer, the US Supreme Court ruled in Bostock v. Clayton County that discrimination on the basis of sexual orientation or gender identity is inherently discrimination on the basis of sex. He asked if he would have any issues interpreting Alaska law in the same way the US Supreme Court held.

MR. CRAIG answered no. He said he would not have any issues.

[1:39:30 PM](#)

SENATOR SHOWER said he is asking the following question of all nominees. He asked if he could confirm that he does not have any criminal or civil actions in his background that would cause problems and that he did not have any skeletons in his closet.

MR. CRAIG answered no.

[1:40:36 PM](#)

CHAIR REINBOLD opened public testimony and after first confirming no one wished to testify, closed public testimony on Mr. Craig's confirmation hearing.

CHAIR REINBOLD thanked him for his advocacy for the blind. She said it was a privilege and an honor to have him before the committee.

[1:42:15 PM](#)

At ease

[1:42:55 PM](#)

CHAIR REINBOLD reconvened the meeting.

[1:43:00 PM](#)

SENATOR SHOWER stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

State Commission for Human Rights
William Craig - Sitka

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

SB 14-SELECTION AND REVIEW OF JUDGES

[1:43:32 PM](#)

CHAIR REINBOLD announced consideration of SB 14, SENATE BILL NO. 14, "An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

[1:44:34 PM](#)

NANCY KAUFMAN, representing self, Anchorage, Alaska, spoke in support of SB 14. She characterized the process for selecting and retaining judges as one that creates a judiciary that is answerable to the people of Alaska. The current selection process for judges serving on the Court of Appeals and District Courts gives the Alaska Judicial Council unchecked power. Judicial Council members are not elected, but [three members] are selected by the Alaska Bar Association and are not confirmed by the legislature. She offered her view that the governor should have the ability to select any qualified attorney to serve as a judge. That nominee should be confirmed by a majority vote of the legislature, she said.

[1:45:59 PM](#)

MARIO BIRD, Attorney, Law Office of Mario L. Bird, Anchorage, Alaska, said the abortion cases discussed earlier get right to the heart of the issues addressed by SB 14.

MR. BIRD stated his view that three Chief Justices of the Alaska Supreme Court ruled against Planned Parenthood cases, which was against the will of the people of Alaska and against the legislature. He provided excerpts from the justices who dissented. In *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007) Chief Justice Matthews joined Chief Justice Carpeneti to dissent, in part, "Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."

In 2016, in *Planned Parenthood of the Great Northwest v. Alaska*, Chief Justice Stowers, dissented. An excerpt from his dissent read, "The Alaska Legislature and the voters of this state have exerted substantial efforts to pass some form of parental involvement law. I have little difficulty concluding that they would prefer this court save the Parental Notification Law by severing certain non-integral provisions if at all possible, and I believe we could do so."

In 2019, in *Planned Parenthood of the Great Northwest v. Alaska*, Chief Justice Stower again dissented. An excerpt from his dissent read, "I believe the court today fails to give respect to the legislature's proper role but instead substitutes its judgment for that of the legislature."

MR. BIRD maintained his view that the court has ignored the will of the people. This was anticipated by some but not the majority of the framers of the Alaska Constitution, he said. He read an excerpt from the Constitutional Convention minutes. On January 23, 1956, Stephen McNealy, an attorney who was later the Democratic Majority Leader of the legislature, said:

...This way the people, in no way you read it, or no matter how you state it, this article does not give the people any rights in regard to appointing these judges." He later said in that same speech he gave to the framers, "We get into the situation where you are going to have four lawyers including the chief justice controlling this judicial council, and I say this to you laymen in all fairness, that in my opinion four lawyers should be able to control this judicial

council; but let's remember the chief justice is going to owe his appointment to the governor." He concluded by saying, "... but I do want the members of this Convention, when you see politics in future years to come, if this constitution goes into effect, I want it remembered at least that I made the statement here when you see politics mixed up in your judges and the possibility of a Pendergast machine being set up here in the Territory, this Missouri Plan we have certainly makes it very possible,....

MR. BIRD concluded that the judiciary needs to be more responsive to the legislature and the voters of the state.

[1:49:41 PM](#)

SENATOR SHOWER that he has heard many of the critiques of SB 14. He said he will be considering some amendments that have been suggested to improve the bill.

[1:50:21 PM](#)

CHAIR REINBOLD highlighted her view that the courts sometimes issue decisions that do not reflect legislative policies or popular opinions of some Alaskans. She said she spent years of her life on a parental rights' initiative. In fact, one of the first bills she worked on sought to reduce public use of funds on abortion was struck down by the Alaska Supreme Court. The issue came before the court three times and it was struck down each time, said.

[1:51:16 PM](#)

LAWRENCE WHITE, representing self, Eagle River, Alaska, spoke with concern on the pandemic. [That topic was not public noticed or under consideration by the committee].

[1:53:17 PM](#)

FRANK PUGH, representing self, Anchorage, Alaska, spoke in support of SB 14, which he opined would broaden the governor's ability to appoint judges and would lead to a more diverse court. Some states elect their judges, which gives the people a better understanding of judges who will serve, he said. He highlighted his frustration about litigation as plaintiff before the superior court relating to an easement.

[1:55:17 PM](#)

DAVID FRAZIER, representing self, Anchorage, Alaska, spoke in support of SB 14. He offered his view that this bill would give

the public more confidence in the judiciary since it will bring fairness into the judicial selection process.

1:56:57 PM

JANET JOHNSON, representing self, Palmer, Alaska, spoke in support of SB 14 to better balance the selection process for judicial appointments. Members of the Judicial Council are not elected. She offered her view that having the public represented in the judicial selection process would provide a better balance. It will also make the judiciary more responsive to the people of Alaska, she said.

1:58:05 PM

LACY LIBBY, representing self, Wasilla, Alaska, spoke in support of SB 14 to provide more transparency and accountability by including the governor and legislature in the judicial selection process. She opined that the Judicial Council is a partisan group with too much power in selecting appellate court judges and magistrates. She offered her belief that this means the council could exclude all potential judges not to their liking. She highlighted that the Judicial Council recommended retaining all the judges listed in the voter pamphlet for the last election even though complaints were filed against several judges. Under the bill, the voices of the people could be represented by legislators in the judicial selection process. She said this is how a representative government should operate. She expressed concern that seven of the nine members of the Commission on Judicial Conduct (CJC) are from Anchorage, but none from the Mat-Su Valley. She said the commission should have geographical representation.

2:01:04 PM

BILL QUINN, representing self, Anchorage, Alaska, spoke in support of SB 14. He expressed his interest in seeing it pass both bodies this session.

2:01:54 PM

SANDY POWERS, representing self, Willow, Alaska, spoke in support of SB 14. She said it is important to have oversight of the judiciary by elected officials rather than by unelected members of the Judicial Council.

2:02:33 PM

MIKE COONS, AMAC Action - Mat-Su Chapter, Palmer, Alaska, expressed his disappointment that the court system spoke in opposition to SB 14. He said two areas the AMAC Action does not have any confidence in are elections and the judicial system. He

provided several examples of what he considered as judicial overreach. He characterized the judiciary as desiring to be part of the legislature. He said the AMAC Action fully supports SB 14.

[2:04:18 PM](#)

SIMON GILLILAND, representing self, Palmer, Alaska, spoke in support of SB 14 because it takes power from an unelected body and places it in the legislature and the governor who are elected officials.

[2:05:10 PM](#)

CHAIR REINBOLD, after first determining no one wished to testify, closed public testimony on SB 14. She said she would continue to accept written comments at sjud@akleg.gov.

CHAIR REINBOLD held SB 14 in committee.

[2:06:14 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 2:06 p.m.